

§ 2000. Rules of Construction and Definitions.

(a) Rules of Construction. The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

- (1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.
- (2) The order in which criteria are listed does not indicate their relative weight or importance.
- (3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the Director of Corrections, including inmates, residents, parolees, and dischargees, regardless of that person's present status.
- (4) "Regulation" means rule or regulation.
- (5) "Shall" is mandatory, "should" is advisory, and "may" is permissive.
- (6) The past, present, or future tense includes the others.
- (7) The masculine gender includes the feminine gender; the singular includes the plural.
- (8) The symbol § refers only to board rules contained in this division.
- (9) The time limits specified in these rules do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

(b) Definitions. For the purpose of the regulations contained in this division the following words shall have the following meanings:

(1) ISL Prisoner. A person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced ~~under~~ pursuant to Penal Code section 1170 if he had committed the crime on or after July 1, 1977.

(2) DSL Prisoner. A person sentenced to prison ~~under~~ pursuant to Penal Code section 1170 for a crime committed on or after July 1, 1977. For the purpose of these rules, once an ISL prisoner has received a retroactively calculated DSL release date all rules applying to DSL prisoners apply to the ISL prisoner's DSL release date and parole.

(3) Life Prisoner. A prisoner serving a sentence of life with the possibility of parole. The parole date is determined by the board. Life sentences may be imposed for the following crimes or conspiracy to commit any of the following crimes:

- (A) First degree murder (Penal Code section 187).
- (B) Second degree murder (Penal Code section 187) committed on or after November 8, 1978.
- (C) Kidnapping for extortion or ransom, with bodily harm to the victim (before September 22, 1951) and without bodily harm to the victim (since September 22, 1951); and kidnapping for robbery (Penal Code section 209).
- (D) Train wrecking not resulting in death or bodily harm (Penal Code section 219).
- (E) Sabotage resulting in death or great bodily harm (former Military and Veterans Code section 1672a).
- (F) Certain forms of aggravated assault by a prisoner serving a sentence of life imprisonment (Penal Code section 4500).
- (G) Exploding a destructive device causing mayhem or great bodily injury (Penal Code section 12310).
- (H) Attempt to murder a government official in retaliation for or prevention of his performance of official duties. (Penal Code ~~§~~section 217.1).
- (I) Habitual Sex Offender, Penal Code ~~§~~section 667.51(c): A party who has violated Penal Code ~~§~~section 288 (committing lewd or lascivious acts or crimes against children) and who has served two or more prison terms as defined in ~~§~~section 667.5 as punishment for violation of an offense listed in subdivision (b), including commission to the state hospital.
- (J) Habitual Offender, Penal Code ~~§~~section 667.7: Any party convicted of a felony involving or likely to involve infliction of great bodily harm, and who has served two or more prior prison terms as per

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“ ”) AND DELETIONS IN STRIKETHROUGH (“”) FORMAT

~~§~~Section 667.5 for crimes of murder, mayhem, rape, etc. or any felony punishable by death or life imprisonment, with or without possibility of parole.

(K) Attempted willful, deliberate, and premeditated murder as defined in Penal Code ~~§~~section 189 (Penal Code ~~§~~sections 187, 664).

(L) Aggravated mayhem (Penal Code ~~§~~section 205).

(M) A new conviction or violation of any of specified controlled substance provisions where the person has served two separate prior prison terms upon conviction of any of the specified provisions (Penal Code ~~§~~section 667.75).

(N) Attempted murder of a peace officer or firefighter committed on or after January 1, 1995 (Penal Code section 664).

(O) Attempted willful, deliberate, and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998 (Penal Code section 664).

THERE WILL BE NO FURTHER CHANGES TO SECTION 2000—EXISTING TEXT TO FOLLOW

NOTE: Authority cited: Sections 3041, 3052 and 5076.2, Penal Code. Reference: Sections 187, 189, 205, 209, 217.1, 219, 664, 667.51(c), 667.7, 667.75, 669, 2933, 3041, 3046, 3056, 3057, 3060, 4500, 4801, 5075, 5076.1 and 12310, Penal Code; Section 1672(a), Military and Veterans Code; and Initiative, Proposition 7, November 7, 1978, General Election.

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE ("___") AND DELETIONS IN STRIKETHROUGH ("—") FORMAT

Title 15. Crime Prevention And Corrections
Division 2. Board of Prison Terms
Chapter 3. Parole Release

Article 11. Parole Consideration Criteria and Guidelines for Murders Committed on or After November 8, 1978, and Specified Attempted Murders ~~Committed on or After January 1, 1987~~

§ 2400. Scope of Article.

The criteria and guidelines in this article apply to prisoners sentenced to prison for first and second degree murders committed on or after November 8, 1978 and attempted murders where the perpetrator is sentenced for life ~~under~~ pursuant to the provisions of Penal Code ~~Section 664, effective January 1, 1987.~~ The guidelines in this article are based on the public's expressed intent in amending Penal Code ~~Sections~~ 190 and 664 that a person convicted of first or second degree murder or attempted murder, as specified, should be incarcerated for an extended period of time.

The prisoner's minimum eligible parole date is established by statute. The amount of good conduct credit that a prisoner sentenced for first or second degree murder may earn to reduce the minimum eligible parole date is established by statute. (Penal Code ~~Sections 2930 et seq., 2933.~~) Life prisoners convicted of attempted murder do not earn these credits; ~~their minimum eligible parole date will be established pursuant to Penal Code Section 3046.~~ The ~~D~~department of Corrections will determine the minimum eligible parole date. The length of time a prisoner must serve prior to actual release on parole is determined by the ~~B~~board. The amount of postconviction credit a prisoner may earn to reduce the length of time prior to release on parole is determined by the ~~B~~board. This article implements Penal Code ~~Section~~ 3041 and concerns only the ~~B~~board's exercise of discretion in determining whether a prisoner is suitable for parole and, if so, when the prisoner should be released on parole.

The standards for the ~~D~~department's action in reducing the minimum eligible parole date and the standards for the ~~B~~board's decision whether to reduce the period of confinement are different. The ~~D~~department's decisions ~~under~~ pursuant to Penal Code ~~Sections 2930 et seq., 2933~~ do not affect the board's decision concerning postconviction credit ~~under~~ pursuant to these rules.

A prisoner committed for first or second degree murder or attempted murder shall have his or her initial parole consideration hearing as provided in ~~Section~~ § 2268. The prisoner will have documentation hearings as provided in ~~Section~~ § 2269.1, but no specific amount of postconviction credit will be granted until the ~~B~~board has established a period of confinement.

Although many of the sections in this article are the same as the sections in Article 5, they are repeated in this article to avoid confusion between the rules applicable to prisoners who committed murders on or before November 7, 1978 and these rules which apply to prisoners who committed murders on or after November 8, 1978, and those who committed specified attempted murders ~~on or after January 1, 1987.~~ The suitability criteria are the same for both groups. The guidelines for establishing the periods of confinement are different because of the change in the minimum term for first degree murder and the change from a determinate to an indeterminate term for second degree murder and attempted murder. The provisions for adjusting the terms for other offenses are also different because of the change in Penal Code ~~Section~~ 669 which permits courts to impose sentences consecutive to life terms (Stats. 1978, Ch. 579, eff. 1/1/79).

~~—As used in this article, "life prisoner(s)" refers only to persons committed to prison for first or second degree murders committed on or after November 8, 1978, or to persons committed to prison for life for attempted murders committed on or after January 1, 1987.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: Sections 182, 190, 664, 2930 et seq., -~~2933~~, 3040, 3041, 3046 and 5076.1, Penal Code.

§ 2403. Base Term.

(a) General. The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. If the prisoner has been received in prison for more than one murder committed on or after November 8, 1978, the base crime is the most serious of the murders considering the facts and circumstances of the crime. If the prisoner has been sentenced to prison for murders committed before November 8, 1978 and for murders committed on or after November 8, 1978, the base offense shall be the most serious of the murders committed on or after November 8, 1978.

The base term shall be established by utilizing the appropriate matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the crime. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

~~If the prisoner has been sentenced to prison for attempted murder, after determining the category as specified, the panel shall impose one half the middle base term, unless the panel finds circumstances in aggravation or mitigation. For all attempted willful, deliberate and premeditated murders, the panel shall refer to matrix (b). For all other attempted murders, they shall refer to matrix (c).~~

If the panel finds circumstances in aggravation or in mitigation as provided in ~~Sections~~ §§ 2404 or 2405, the panel may impose the upper or lower base term provided in the matrix by stating the specific reason for imposing such a term. A base term other than the upper, middle or lower base term provided in the matrix may be imposed by the panel if justified by the particular facts of the individual case and if the facts supporting the term imposed are stated.

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“ ”) AND DELETIONS IN STRIKETHROUGH (“”) FORMAT

(b) Matrix of Base Terms for First Degree Murder committed on or after November 8, 1978.

CIRCUMSTANCES

FIRST DEGREE MURDER Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290 <u>2410</u>)	<i>A. Indirect</i> Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.	<i>B. Direct or Victim Contribution</i> Death was almost immediate <i>or</i> resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victim acting in defense of self or property.	<i>C. Severe Trauma</i> Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	<i>D. Torture</i> Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
<i>I. Participating Victim</i> Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	25-26-27	26-27-28	27-28-29	28-29-30
<i>II. Prior Relationship</i> Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	26-27-28	27-28-29	28-29-30	29-30-31
<i>III. No Prior Relationship</i> Victim had little or no personal relationship with prisoner <i>or</i> motivation for act resulting in death was related to the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.	27-28-29	28-29-30	29-30-31	30-31-32
<i>IV. Threat to Public Order or Murder for Hire</i> The act resulting in the victim's death constituted a threat to the public order including <u>the</u> murder of a police officer, prison	28-29-30	29-30-31	30-31-32	31-32-33

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“ ”) AND DELETIONS IN STRIKETHROUGH (“”) FORMAT

guard <u>correctional officer</u> , public official, fellow patient or prisoner, any killing within an institution, or any killing where the prisoner hired and/or paid another person to commit the offense.				
---	--	--	--	--

SUGGESTED BASE TERM

(c) Matrix of Base Terms for Second Degree Murder committed on or after November 8, 1978.

CIRCUMSTANCES

SECOND DEGREE MURDER Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290 <u>2410</u>)	<i>A. Indirect</i> Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack; a crime partner actually did the killing.	<i>B. Direct or Victim Contribution</i> Death was almost immediate <i>or</i> resulted at least partially from contributing factors from the victim; e.g. victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	<i>C. Severe Trauma</i> Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with weapon not resulting in immediate death or actions calculated to induce terror in the victim.
<i>I. Participating Victim</i> Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	15-16-17	16-17-18	17-18-19
<i>II. Prior Relationship</i> Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. <u>This category shall not be utilized</u> If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	16-17-18	17-18-19	18-19-20
<i>III. No Prior Relationship</i> Victim had little or no personal relationship with prisoner; <i>or</i> motivation for act resulting in death was related to the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.	17-18-19	18-19-20	19-20-21

SUGGESTED BASE TERM

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“ ”) AND DELETIONS IN STRIKETHROUGH (“”) FORMAT

(d) Matrix of Base Terms for Attempted Willful, Deliberate and Premeditated Murder committed on or after January 1, 1987.

CIRCUMSTANCES

<u>ATTEMPTED MURDER</u> <u>Penal Code § 664(a) (in years and does not include post conviction credit as provided in § 2410)</u>	<u>A. Minor Injury</u> <u>Victim unharmed or received minor injury.</u>	<u>B. Victim Assaulted</u> <u>Victim assaulted or otherwise seriously injured.</u>	<u>C. Major Injury</u> <u>Victim suffered major injuries.</u>	<u>D. Torture</u> <u>Victim was subjected to prolonged infliction of physical pain.</u>
<u>I. Participating Victim</u> <u>Victim was accomplice or otherwise implicated in a criminal act with the prisoner, e.g., crime partner, drug dealer, etc.</u>	<u>7-8-9</u>	<u>8-9-10</u>	<u>9-10-11</u>	<u>10-11-12</u>
<u>II. Prior Relationship</u> <u>Victim was involved in a personal relationship with prisoner, e.g., spouse, family member, friend, etc. which contributed to the motivation for the attempted murder. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, use category IV.</u>	<u>8-9-10</u>	<u>9-10-11</u>	<u>10-11-12</u>	<u>11-12-13</u>
<u>III. No Prior Relationship</u> <u>Victim had little or no personal relationship with prisoner or the motivation for the attempted murder was related to the accomplishment of another crime, e.g. robbery, rape, or other felony.</u>	<u>9-10-11</u>	<u>10-11-12</u>	<u>11-12-13</u>	<u>12-13-14</u>
<u>IV. Threat to Public Order or Murder for Hire</u> <u>The attempted murder constituted a threat to the public order, e.g., police officer, correctional officer, public official, fellow patient or prisoner or any attempted murder within an institution, any attempted murder where the prisoner hired and/or paid another person to commit the offense.</u>	<u>10-11-12</u>	<u>11-12-13</u>	<u>12-13-14</u>	<u>13-14-15</u>

SUGGESTED BASE TERM

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“___”) AND DELETIONS IN STRIKETHROUGH (“—”) FORMAT

(e) Matrix of Base Terms for Attempted Murder of a Peace Officer or Firefighter committed on or after January 1, 1995.

CIRCUMSTANCES

<u>ATTEMPTED MURDER</u> Penal Code § 664(e) (in years and does not include post conviction credit as provided in § 2410)	<u>A. Minor Injury</u> Victim unharmed or received minor injury.	<u>B. Victim Assaulted</u> Victim assaulted or otherwise seriously injured.	<u>C. Major Injury</u> Victim suffered major injuries.	<u>D. Torture</u> Victim was subjected to prolonged infliction of physical pain.
<u>I. Peace officer or firefighter was placed at risk of serious injury or death due to the act(s) of the prisoner.</u>	<u>7-8-9</u>	<u>8-9-10</u>	<u>9-10-11</u>	<u>10-11-12</u>
<u>II. The act was committed while the prisoner was fleeing or was attempting to flee from law enforcement officers or the manner in which the act was committed created a risk of injury to others e.g., high speed chase, shooting from a moving vehicle, fire set in inhabited building.</u>	<u>8-9-10</u>	<u>9-10-11</u>	<u>10-11-12</u>	<u>11-12-13</u>
<u>III. The act was committed in an attempt to preclude discovery of a crime committed by the prisoner and/or his/her crime partners.</u>	<u>9-10-11</u>	<u>10-11-12</u>	<u>11-12-13</u>	<u>12-13-14</u>
<u>IV. The prisoner committed an act causing a peace officer or firefighter to respond and then ambushed the peace officer or firefighter.</u>	<u>10-11-12</u>	<u>11-12-13</u>	<u>12-13-14</u>	<u>13-14-15</u>

SUGGESTED BASE TERM

ADDITIONS TO THE PROPOSED TEXT ARE INDICATED IN UNDERLINE (“___”) AND DELETIONS IN STRIKETHROUGH (“—”) FORMAT

(f) Matrix of Base Terms for Attempted Willful, Deliberate and Premeditated Murder of a Peace Officer or Firefighter committed on or after January 1, 1998.

<u>CIRCUMSTANCES</u>				
<u>ATTEMPTED MURDER</u> Penal Code § 664(f) (in years and does not include post conviction credit as provided in § 2410)	<u>A. Minor Injury</u> Victim unharmed or received minor injury.	<u>B. Victim Assaulted</u> Victim assaulted or otherwise seriously injured.	<u>C. Major Injury</u> Victim suffered major injuries.	<u>D. Torture</u> Victim was subjected to prolonged infliction of physical pain.
<u>I. Peace officer or firefighter was placed at risk of serious injury or death due to the act(s) of the prisoner.</u>	<u>15-16-17</u>	<u>16-17-18</u>	<u>17-18-19</u>	<u>18-19-20</u>
<u>II. The act was committed while the prisoner was fleeing or was attempting to flee from law enforcement officers or the manner in which the act was committed created a risk of injury to others, e.g., high speed chase, shooting from a moving vehicle, fire set in inhabited building.</u>	<u>16-17-18</u>	<u>17-18-19</u>	<u>18-19-20</u>	<u>19-20-21</u>
<u>III. The act was committed in an attempt to preclude discovery of a crime committed by the prisoner and/or his/her crime partners.</u>	<u>17-18-19</u>	<u>18-19-20</u>	<u>19-20-21</u>	<u>20-21-22</u>
<u>IV. The prisoner committed an act causing a peace officer or firefighter to respond and then ambushed the peace officer or firefighter.</u>	<u>18-19-20</u>	<u>19-20-21</u>	<u>20-21-22</u>	<u>21-22-23</u>

SUGGESTED BASE TERM

(g) Base Terms for Other Life Crimes.

In considering life crimes for which no matrix is provided, the panel shall impose a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, and shall consider any relevant Judicial Council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Sections 182, 3040 and 3041, Penal Code.